

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

MABEL AWOUSSEI,

Defendant.

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8:08CR371

REPORT AND

RECOMMENDATION

This matter is before the court on the motion to dismiss filed by defendant Mabel Awoussi ([Filing No. 32](#)). Mabel Awoussi, together with Roland Awoussi, is charged in Count I of the Indictment with a conspiracy from October 1, 2007, through October 16, 2008, to distribute and possess with intent to distribute more than 500 grams of cocaine in violation of [21 U.S.C. § 846](#). **See** [Filing No. 2](#). Mabel Awoussi, together with Roland Awoussi, is also charged in Count IV with the possession with intent to distribute more than 500 grams of cocaine on October 18, 2008 in violation of [21 U.S.C. § 841\(a\)\(1\)](#). Roland Awoussi alone is charged in Counts II and III of the Indictment. Mabel Awoussi moves to dismiss Count IV of the Indictment arguing Count IV of the Indictment is multiplicitous with Count I of the Indictment.

An evidentiary hearing was held on Mabel Awoussi's motion on February 4, 2009. Mabel Awoussi was present with her counsel, Casey J. Quinn. The United States was represented by Assistant U.S. Attorney Thomas J. Kangior. No evidence was presented by either side and the court heard the argument of Mabel Awoussi's counsel.

On October 20, 2008, a grand jury sitting in the District of Nebraska returned an indictment against Roland Awoussi and Mabel Awoussi, charging:

Count I

From an unknown date but at least as early as October 1, 2007, and continuing through October 16, 2008, in the District of Nebraska and elsewhere, ROLAND AWOUSSE and MABEL AWOUSSE, Defendants herein, did knowingly and intentionally combine, conspire, confederate and agree with other persons, both known and unknown to the grand jury, to distribute and possess with intent to distribute 500 grams or

more of a mixture or substance containing a detectable amount of cocaine, its salts, isomers, and salts of isomers, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1) and Title 21, United States Code, Section 841(b)(1).

In violation of Title 21, United States Code, Section 846.

Count II

On or about December 27, 2007, in the District of Nebraska, ROLAND AWOUSSEI, Defendant herein, did knowingly and intentionally distribute less than 500 grams of a mixture or substance containing a detectable amount of cocaine, its salts, isomers, and salts of isomers, a Schedule II controlled substance.

In violation of Title 21, United States Code, Section 841(a)(1), and Title 21, United States Code, Section 841(b)(1).

Count III

On or about October 16, 2008, in the District of Nebraska, ROLAND AWOUSSEI, Defendant herein, did knowingly and intentionally distribute less than 500 grams of a mixture or substance containing a detectable amount of cocaine, its salts, isomers, and salts of isomers, a Schedule II controlled substance.

In violation of Title 21, United States Code, Section 841(a)(1), and Title 21, United States Code, Section 841(b)(1).

Count IV

On or about October 16, 2008, in the District of Nebraska, ROLAND AWOUSSEI, and MABEL AWOUSSEI, Defendants herein, did knowingly and intentionally possess with intent to distribute 500 grams or more of a mixture or substance containing a detectable amount of cocaine, its salts, isomers, and salts of isomers, a Schedule II controlled substance.

In violation of Title 21, United States Code, Section 841(a)(1), and Title 21, United States Code, Section 841(b)(1).

See Filing No. 2.

Mabel Awoussi's assertion that Count IV of the Indictment is multiplicitous with Count I of the Indictment is without merit. "It is well established that '[t]he commission of a substantive offense and a conspiracy to commit that offense are two separate and distinct crimes.'" United States v. Muza, 788 F.2d 1309, 1312 (8th Cir. 1986) (quoting United States v. Shigemura, 682 F.2d 699, 705 n.11 (8th Cir. 1982)); see Pinkerton v. United

States, 328 U.S. 640 (1946). Indeed "[i]t is permissible and also customary to join a conspiracy count with separate substantive counts." United States v. Graham, 548 F.2d 1302, 1310 (8th Cir. 1977); see also United States v. Zackery, 494 F.3d 644, 647 (8th Cir. 2007).

CONCLUSION

Mabel Awoussi's motion to dismiss Count IV of the Indictment should be denied.

IT IS RECOMMENDED TO CHIEF JUDGE JOSEPH F. BATAILLON that:

Awoussi's motion to dismiss Count IV of the Indictment ([Filing No. 32](#)) be denied.

ADMONITION

Pursuant to [NECrimR](#) 57.3 any objection to this Report and Recommendation shall be filed with the Clerk of the Court within ten (10) business days after being served with a copy of this Report and Recommendation. Failure to timely object may constitute a waiver of any objection. The brief in support of any objection shall be filed at the time of filing such objection. Failure to file a brief in support of any objection may be deemed an abandonment of the objection.

DATED this 5th day of February, 2009.

BY THE COURT:

s/Thomas D. Thalken
United States Magistrate Judge